PIL 63/2005
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTG)
THE HON'BLE MR JUSTICE B.D. AGARWAL
Agarwal,J

1. This writ application under Article 226 of the Constitution of India, in the nature of PIL, has been filed by two residents of Dergaon Town seeking a writ in the nature of mandamus prohibiting the respondents from allowing any construction within 75 meters from the central line of the National Highway No.37, passing through Dergaon Town.
2. The immediate cause for filing this PIL is that the Dergaon Municipal Board has decided to construct a Super Market just by the side of the National Highway near Dergaon Town. The said Super Market will be getting financial assistance from the Ministry of Urban Development and Poverty Alleviation.

3. We have heard Shri A. Dasgupta, learned counsel for the petitioners. The respondents were represented by Mr. K.N. Choudhury, learned Addl. A.G., Assam and Mr. H. Rahman, learned Asstt. S.G.I. we have also perused the affidavits filed by the respondents.
4. The learned counsel for the respondents submitted that in the meanwhile the Central Government and more particularly National Highways Authority of India (respondent no.3) have taken a decision to divert nearly 11.5 Kms. stretch of NH-37 considering the fact that the existing width of the road passing through Dergaon Town is a narrow one and there is no scope of expansion. According to the learned counsel for the respondents, after the decision of the respondents to construct a bye-pass the petitioners should not have any grievance for allowing constructions in the town area.

5. To support their arguments, the learned counsel for the respondents have submitted a copy of letter dated 6.12.2006 issued by National Highways Authority of India wherein the decision to construct a bye-pass near Dergaon Town has been mentioned. This letter has been enclosed with the counter affidavit filed on behalf of the respondents 2 and 3.
6. Shri Dasgupta, learned counsel for the petitioners submitted that so long bye-pass do not become operational, no construction may be allowed by the side of the existing National Highway, passing through the Town.
7. In our considered opinion when the Central Government and National Highways Authority have taken a decision to construct a bye-pass to avoid traffic congestion in the town area and since this statement has been made on oath, it has to be accepted by the Court. In other words, we cannot act on suspicion or surmise that the aforesaid statement has not been made bona fide.
8. In view of the above decision of the respondents, we hold that the grievance of the petitioners have been met and there is no reason to keep the PIL pending for final hearing. Accordingly, the writ petition is disposed of. It is made clear that the respondents shall follow the rules and regulations of National Highways (Land and Traffic) Act, 2002 when the bye-pass is constructed. Similarly, the building rules applicable to Dergaon Municipal Board should also be followed in letter and spirit.